Final Rejection fails to establish a prima facie case of obviousness, as required. In particular, the rejection fails to demonstrate that "there was an apparent reason to combine the known elements *in the fashion claimed*." *KSR Int'l v. Teleflex, Inc.* No. 04-1350, 550 U.S. ___, Slip. op. at 14, 82 USPQ2d 1385, 1396 (U.S. Apr. 30, 2007). The rejection has failed to establish the analysis as required by the Supreme Court. Rather, the hypothetical combination teaches no more than "the predictable use of prior art elements according to their established functions," *Id.*, with no disclosure or suggestion of the claimed features as a whole.

As demonstrated below, the rejection also is legally improper because the cited references actually teach away from the claimed features as a whole: "when the prior art teaches away from combining certain known elements, discovery of a successful means of combining them is more likely to be nonobvious." *KSR Int'l v. Teleflex, Inc.*, Slip. op. at 12, 82 USPQ2d at 1395.

Delaney et al.

As admitted on page 4 of the Final Rejection, the first reference (U.S. Patent Publication No. 2004/0141514 by Delaney et al.) fails to disclose or suggest: (1) determining by a signaling gateway a congestion level for each of a plurality of voice over IP-based application server process groups; (2) each of the application server process groups distinct from the signaling gateway; or (3) sharing a same prescribed point code between the application server process groups in the signaling gateway. As demonstrated below, Delaney et al. *also* fails to disclose or suggest the claimed feature of: (4) receiving by the signaling gateway an SS7 message specifying the prescribed point code assigned to the signaling gateway as the destination point code; or (5) identifying by the signaling gateway any application server process group. In fact, Delaney et al. fails to disclose or suggest any of the claimed features.

Delaney et al. does not disclose or suggest the claimed feature of a signaling gateway receiving an SS7 message having a destination point code specifying the prescribed point code used by the signaling gateway, as relied upon in the Final Rejection. To the contrary, paragraph 35 of Delaney et al. (cited and relied upon on page 3 of the Final Rejection) describes with respect to Figure 6 that the Signal Transfer Point (STP) 400 includes a routing function 420 for

routing a received packet to ***another destination identified by its Destination Point Code (DPC)*** using route selection based on source information specified in the received packet (see, e.g., paragraphs 35, and 38-39 (including Table 2)).

Delaney et al. explicitly illustrates with respect to Figure 7 and paragraphs 41-44 that the STP 400 (having a point code of "1-1-1") receives a signaling message M1 specifying a DPC=145-2-1, and ***routes*** the signaling message M1 to the destination 212 (assigned the point code "145-2-1") via a selected linkset LS1 (paragraph 43); the STP 400 also receives a signaling message M2 specifying the same DPC= 145-2-1, and ***routes*** the signaling message M2 to the same destination 212 via another selected linkset LS5 (paragraph 44, lines 1-20).

Hence, the Final Rejection is legally deficient because Delaney et al. does not teach or suggest the claimed feature that the signaling gateway receives an SS7 message containing a destination point code specifying the prescribed point code used by the signaling gateway. Delaney et al. consistently teaches that the STP 400 performs route selection for ***routing*** a packet to ***a destination having the point code specified in the DPC field*** based on source information specified in the received packet, and neither discloses nor suggests to one skilled in the art that the STP node 400 should receive a packet, where the DPC specified in the packet matches the point code of the STP 400.[1]

Further, even though Delaney et al. suggests in paragraph 11 that a signaling gateway could be substituted for the described STP, this is not a teaching or suggestion that the STP or signaling gateway would receive a data packet that is addressed to the STP or the signaling gateway, since it is well known that signaling gateways also can perform relaying of SS7 signaling messages (see, e.g., definition of Signaling Gateway at page 4 of RFC 2719, of record in the subject application and considered by the Examiner on March 26, 2007). Hence, one skilled in the art would interpret paragraph 11 that a signaling gateway could be used for relaying

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[1]Although the test for establishing an implicit motivation in the prior art is what a prior art statement would have suggested to those of ordinary skill, such a statement "must be considered ***in the context of the teaching of the entire reference***." *In re Kotzab*, 55 USPQ2d 1313, 1317 (Fed. Cir. 2000).

data packets.

Delaney et al. also fails to disclose or suggest any application server process, as claimed. As illustrated in the specification (e.g., at page 7, lines 26-29 and page 8, lines 14-24), the application server processes are executed by call agents (i.e., media gateway controllers) that receive and process a Message Signal Unit (MSU) in order to terminate and/or originate a Switched Circuit Network (SCN) application protocol (e.g., ISUP) (see, e.g., page 3, lines 2-9 of the specification). Hence, the broadest reasonable interpretation of "application server process" cannot be so broad as to be inconsistent with the specification, which describes application server processes as initiating and terminating SCN application protocols, or the interpretation those skilled in the art would reach (e.g., page 4 of RFC 2719 defines media gateway controllers that terminate SCN application protocols).[2]

Hence, the claimed application server processes cannot be so broadly interpreted as reading on the route selection described in Delaney et al., especially since such an interpretation is inconsistent with the specification, inconsistent with the interpretation those skilled in the are would reach, and disregards the claim language described above that the received SS7 message specifies within the destination point code field the prescribed point code used by the signaling gateway.[3]

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[2]"During patent examination, the pending claims must be 'given their broadest reasonable interpretation consistent with the specification.'" MPEP §2111 at 2100-46 (Rev. 3, Aug. 2005) (*quoting In re Hyatt*, 211 F.3d 1367, 1372, 54 USPQ2d 1664, 1667 (Fed. Cir. 2000)).

"The broadest reasonable interpretation of the claims must also be consistent with the interpretation that those skilled in the art would reach." MPEP §2111.01 at 2100-47 (Rev. 3, Aug. 2005) (*citing In re Cortright*, 165 F.3d 1353, 1359, 49 USPQ2d 1464, 1468 (Fed. Cir. 1999)).

[3]It is well settled that each and every claim limitation must be considered. As specified in MPEP §2143.03, entitled "**All Claim Limitations Must Be Taught or Suggested**": "To establish prima facie obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). 'All words in a claim must be considered in judging the patentability of that claim against the prior art.' *In re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970)." MPEP §2143.03 at

For these reasons alone the Final Rejection should be withdrawn because it fails to demonstrate that Delaney et al. teaches the claimed features, as asserted in the Final Rejection, and therefore fails to establish a prima facie case of obviousness.

Burst

Despite assertions to the contrary on page 4 of the Final Rejection, the second reference (U.S. Patent No. 7,088,677 to Burst) does not disclose or suggest the claimed feature of the signaling gateway determining a congestion level for each of a plurality of voice over IP-based application server process groups.

To the contrary, Burst teaches away from the claimed signaling gateway by explicitly teaching with respect to Figures 2 and 4 that the signaling gateway 212 merely interfaces with the IP network 205 via a link 214 and with the CCS7 network via a CCS7 signaling link 216 (see, e.g., column 11, lines 18-24). Burst further teaches away from the claimed signaling gateway by specifying that all congestion detection is performed not by the signaling gateway 212, but rather by ***the delay algorithm processor 420 within the media gateway 202***:

> ***The media gateway 202*** also includes a receiver (RCV) 418. When the receiver 418 receives packets, it forwards the packets to the media gateway processor 402. The receiver 418 also forwards the packets or the timestamp information contained in the packet headers to the delay algorithm processor 420. ***The delay algorithm processor 420 utilizes the timestamp information contained in the headers to determine whether to admit or deny new calls*** and forwards this information to the media gateway processor 402. As is described in greater detail with reference to FIG. 9, ***if the delay algorithm processor 420 instructs the media gateway processor to deny new calls, the media gateway processor 402 refuses new call requests from the signaling gateway 212***. If the decision is to admit new calls the media gateway processor 402 begins admitting new calls until the delay algorithm processor 420 signals that new calls should be denied.

(Column 12, lines 15-32).

Hence, Burst explicitly teaches away from the claimed signaling gateway detecting the

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congestion level, by specifying that "if the delay algorithm processor for 20 instructs the media gateway processor [402] to deny new calls, ***the media gateway processor*** 402 refuses new call requests from the signaling gateway 212."

Hence, the Final Rejection fails to establish that Burst teaches the claimed feature of the signaling gateway determining a congestion level for each of a plurality of voice over IP-based application server process groups.

Joseph et al.

The third reference (U.S. Patent No. 7,068,654 to Joseph et al.) fails to disclose or suggest "each of the application server process groups distinct from the signaling gateway and sharing ***a same prescribed point code*** with the signaling gateway", as asserted on page 4 of the Final Rejection. To the contrary, the cited portion (column 9, lines 40-50) describes a host that shares the same "network address with a plurality of other host for communication with network devices on an external network." Although the cited portion describes VoIP modules, Joseph et al. consistently teaches that the "shared" common address refers to an ***IP address*** (see, e.g., column 2, lines 59-64; column 4, lines 41-43; column 5, lines 15-16; column 11, lines 3-6; column 12, lines 52-57), and not a point code.

Further, Joseph et al. provides no disclosure or suggestion of the signaling gateway sharing the same prescribed point code with application server process groups, especially since the only reference to any signaling gateway is at column 3, lines 38-40, 51-53 and 56-58. In fact, there is no reference whatsoever to "point code" in Joseph et al.

For these and other reasons, the Final Rejection fails to establish a prima facie case of obviousness for independent claims 1, 9, and 25, especially since Joseph et al. does not teach or suggest the claimed features, as asserted in the Final Rejection.

The Hypothetical Combination

As apparent from the foregoing, the hypothetical combination fails to disclose or suggest the claimed features that a ***signaling gateway,*** that shares the same prescribed point code with

multiple application server process groups, determines congestion levels for each of the application server process groups, receives an SS7 message having a destination point code specifying the prescribed point code, identifying ***by the signaling gateway*** one of the application server process groups as a candidate group for ***processing*** the message signaling unit, and selectively sending ***by the signaling gateway*** a congestion notification message based on the priority of the message signaling unit not exceeding the corresponding congestion level for the candidate group.

Rather, the hypothetical combination discloses no more than a piecemeal combination of individual components that simply route packets (Delaney) using Media Gateway Controllers that individually determine congestion levels (see 202a, 202b, 202c in Fig. 3 of Burst, Jr.), where ***IP addresses*** of host nodes can be shared (Joseph et al.)

Hence, the hypothetical combination does not suggest any of the claimed features of the ***signaling gateway*** determining the congestion levels for each of the application server process groups that ***share the same point code***, and selectively outputting ***by the signaling gateway*** a congestion notification message, as claimed. Hence, independent claims 1, 9, and 25 provide "more than the predictable use of prior art elements according to their established functions". *KSR Int'l v. Teleflex, Inc.*, No. 04-1350, 550 U.S. ___, Slip op. at 13, 82 USPQ 2d 1385, 1396 (U.S. Apr. 30, 2007).

For these and other reasons, the Final Rejection fails to establish a *prima facie* case of obviousness as required by *KSR Int'l v. Teleflex, Inc.*, hence the §103 rejection of independent claims 1, 9, and 25 should be withdrawn.

Conclusion

It is believed the dependent claims are allowable in view of the foregoing.

In view of the above, it is believed this application is in condition for allowance, and such a Notice is respectfully solicited.

To the extent necessary, Applicant petitions for an extension of time under 37 C.F.R. 1.136. Please charge any shortage in fees due in connection with the filing of this paper, including any missing or insufficient fees under 37 C.F.R. 1.17(a), to Deposit Account No. 50-1130, under Order No. 95-496, and please credit any excess fees to such deposit account.

Respectfully submitted,

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(Monday, October 8, 2007=Federal Holiday)